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CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Constitutional Provisions Directly Involved

AMENDMENT 15

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Other Constitutional Provisions Involved

ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—

between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. * * * *

* * *

ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

* * *

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

* * *

AMENDMENT 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Statutory Provisions Directly Involved

Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. §1973c):

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) of this title based upon determinations made under the first sentence of section 4(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) of this title based upon determinations made under the second sentence of section 4(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or proce-

dure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Other Statutory Provisions Involved

Section 4 of the Voting Rights Act of 1965, as amended; pertinent provisions of (42 U.S.C. §1973b):

(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten

years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and

with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this Section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) Definition of test or device.

The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter. (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) ....

5 U.S.C. §301. Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

28 U.S.C. §509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in hearing examiners employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.;

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.; and

(4) of the Board of Parole.

28 U.S.C. §510. Delegation of authority

The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

Regulations Involved

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, pertinent provisions (28 C.F.R. 51):

AUTHORITY: The provision of this Part 51 issued under Sec. 5, 84 Stat. 315; 5 U.S.C. 301, 28 U.S.C. 509, 510, 42 U.S.C. 1973c.

§51.3 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) The 60-day period shall commence upon receipt by the Department of Justice of a submission from an appropriate official, which submission satisfies the requirements of §51.10(a). Procedures for requesting additional material and for determining the commencement of the 60-day period when a submission is inadequate are described in §51.18.

(c) . . . .

§51.10 Contents of submissions.

(a) Each submission shall include:

(1) A copy of any legislative or administrative enactment or order embodying a change affecting voting, certified by an appropriate officer of the submitting authority to be a true copy.

(2) The date of final adoption of the change affecting voting.

(3) Identification of the authority responsible for the change and the mode of decision (e.g., act of State legis-

lature, ordinance of city council, redistricting by election officials).

(4) An explanation of the difference between the submitted change affecting voting and the existing law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting. When the change will affect less than the whole State or subdivision, such explanation should include a description of which subdivisions or parts thereof will be affected and how each will be affected.

(5) A statement certifying that the change affecting voting has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(6) With respect to redistricting, annexation, and other complex changes, other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change. Such other information may include items listed under paragraph (b) of this section. When such other information is required, the Attorney General shall notify the submitting authority in the manner provided in §51.18(a).

(b) In addition to the requirements listed in paragraph (a) of this section, each submission may include appropriate supporting materials to assist the Attorney General in his consideration. The Attorney General strongly urges the submitting authority to include the following information insofar as it is available and relevant to the specific change submitted for consideration:

(1) A statement of the reasons for the change affecting voting.

(2) A statement of the anticipated effect of the change affecting voting.

(3) A statement identifying any past or pending litigation concerning the change affecting voting or related prior voting practices.

(4) A copy of any other changes in law or administration relating to the subject matter of the submitted change affecting voting which have been put into effect since the time when coverage under section 4 of the Voting Rights Act began and the reasons for such prior changes. If such changes have already been submitted the submitting authority may refer to the date of prior submission and identify the previously submitted changes.

(5) Where any change is made that revises the constituency which elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or changes the location of a polling place or place of registration, a map of the area to be affected showing the following:

(i) The existing boundaries of the voting unit or units sought to be changed.

(ii) The boundaries of the voting unit or units sought by the change.

(iii) Any other changes in the voting unit boundaries or in the geographical makeup of the constituency since the time that coverage under section 4 began. If such changes have already been submitted the submitting authority may refer to the date of the prior submission and identify the previously submitted changes.

(iv) Population distribution by race within the existing units.

(v) Population distribution by race within the proposed units.

(vi) Any natural boundaries or geographical features which influenced the selection of boundaries of any unit defined or proposed for the new voting units.

(vii) Location of polling places.

(6) Population information: (i) Population before and after the change, by race, of the area or areas to be affected by the change. If such information is contained in the publications of the U.S. Bureau of the Census, a statement to that effect may be included.

(ii) Voting-age population and the number of registered voters before and after the change, by race, for the area to be affected by the change. If such information is contained in the publication of the U.S. Bureau of the Census, a statement to that effect may be included.

(iii) Copies of any population estimates, by race, made in connection with adoption of the proposed change, preparation of the submission or in support thereof and the basis for such estimates.

(iv) Where a particular office or particular offices are involved, a history of the number of candidates, by race, who have run for such office in the last two elections and the results of such elections.

(7) Evidence of public notice or opportunity for the public to be heard. In examining submissions, consideration may be given, where appropriate, to evidence of public notice and opportunity for interested parties to participate in the decision to adopt or implement the pro-

posed change and to indications that such participation in fact took place, or to evidence of notice to the public that a submission has been made soliciting comment by the public to the Department of Justice. Examples of materials demonstrating public notice or participation include:

(i) Copies of newspaper articles discussing the proposed change.

(ii) Copies of public notices (and statements regarding where they appeared, e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups) which describe the proposed change and invite public comment or participation in hearings, or which announce submission to the Attorney General and invite comments for his consideration.

(iii) Minutes or accounts of public hearings concerning the proposed changes.

(iv) Statements, speeches, and other public communications concerning the proposed changes.

(v) Copies of comments from the general public.

(vi) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(8) Where information requested herein is relevant but not known and not believed to be available, submissions should so state.

(9) Where information furnished reflects an estimation, submissions should identify the individual and state his qualifications to make the estimate.

(10) Submissions should identify in general the source of any information they supply.

(11) When a submitting authority desires the Attorney General to consider any information which has been supplied in connection with an earlier submission, incorporation by reference may be accomplished by stating the date and subject matter of the earlier submission and identifying the relevant information therein.

§51.18 Obtaining information regarding submissions.

(a) If the submission does not satisfy the requirements of §51.10(a), the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission.

(b) ....

§51.19 Standard for decision concerning submissions.

Section 5, in providing for submission to the Attorney General as an alternative to seeking a declaratory judgment from the U.S. District Court for the District of Columbia, imposes on the Attorney General what is essentially a judicial function. Therefore, the burden of proof on the submitting authority is the same in submitting changes to the Attorney General as it would be in submitting changes to the District Court for the District of Columbia. The Attorney General shall base his decision on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted

by the Department of Justice. If the Attorney General is satisfied that the submitted change does not have a racially discriminatory purpose or effect, he will not object to the change and will so notify the submitting authority. If the Attorney General determines that the submitted change has a racially discriminatory purpose or effect, he will enter an objection and will so notify the submitting authority. If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority.

§51.26 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, notations concerning conferences with the submitting authority or any interested individual or group and a copy of any letters from the Attorney General concerning his decision whether to object to a submission. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under §51.12(c) shall not be included in the section 5 file. Investigative reports and internal memoranda shall not be included in the section 5 file.

(b) ....